

04 14.06.2023
rkd Ct.15

W.P.A. 8512 of 2015

Sri Partha Malik & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Ayan Banerjee,
Mr. Soumo Chaudhury

....for the petitioners.

Mr. Satyaraj Banerjee,
Syed Nurun Arefin,
Mr. Rahul Singh,
Ms. Rashmi Binayak

....for the private respondent.

Mr. Suman Basu

....for the Chandernagore Municipal Corporation.

The writ petition has been taken up for consideration wherein the decision of the Commissioner of Chandernagore Municipal Corporation dated 3rd December, 2014 is under challenge.

After hearing the learned advocates representing the parties, it appears that this is a dispute between two brothers. One of the brothers has approached this Court against another by laying challenge against the order of Chandernagore Municipal Corporation dated 3rd December, 2014 on the score that minimum space which is required to be maintained in between two adjacent premises has not been maintained in deviation of the resolution of the Chandernagore Municipal Corporation dated 14th August, 2010.

It has been submitted on behalf of the petitioners that pursuant to the amended provision as notified vide notification dated 9th April, 2010 once municipality has fixed space which is required to be kept open in between two adjacent premises vide resolution dated 14th August, 2010 that cannot be tweaked by a subsequent decision which has been done in the presence case vide order dated 3rd December, 2014 passed by the Commissioner, Chandernagore Municipal Corporation and accordingly the said decision dated 3rd December, 2014 should be interdicted by this Court.

The learned advocate representing the Corporation has relied upon the notification dated 9th April, 2010 by which amendment has been brought in the West Bengal Municipalities (Building), Rules, 2007 and sub-rule (5) has been inserted after sub-rule(4) in Rule 50. According to the learned advocate representing the Corporation municipality has been empowered by insertion of aforesaid sub-rule (5) to fix the open space norms in consideration of the ground realities.

It has been submitted that since the premises of the respondent no.6 has been constructed under Basic Services of the Urban Poor

(for short “BSUP”) Project sponsored by the Jawaharlal Nehru National Urban Renewal Mission, Ministry of Housing & Urban Poverty Alleviation (MOHUPA), Government of India, the corporation has taken a liberal approach in order to regularise the deviations made by the respondent no.6 on being empowered by insertion of aforesaid sub-rule (5) to Rule 50 of the West Bengal Municipalities (Building), Rules, 2007.

It has also been brought to the notice of this Court that previously after the complaint was lodged by the petitioners a stop work notice was issued by the corporation but considering the fact situation the same has been lifted which permitted the respondent no.6 to make construction under the BSUP Project.

Having heard the learned advocates representing the parties and after perusal of the relevant materials available on record and in consideration of sub-rule (5) to Rule 50 of West Bengal Municipalities (Building), Rules, 2007 as inserted by way of amendment this Court cannot shut its eyes to the ground realities as depicted from the order of the Commissioner, Chandernagore Municipal Corporation dated 3rd December, 2014.

It has been narrated in the said impugned order that respondent no.6, Ajay Krishna Malik is a rickshaw puller and his wife is working as domestic help which was taken into consideration by the concerned respondent authorities while taking decision on 29th September, 2010 thereby permitting the respondent no.6 to retain deviation to the extent of not fully maintaining the open space in between premises of the petitioners and the respondent no.6 while making construction.

It is also recorded in the order that there is a pond under the co-ownership of the petitioners and the respondent no.6 situates at the rear side of the premises therefore there ought not to be any obstruction in erection of vertical structure.

This Court finds it apt to quote sub-rule (5) to Rule 50 of West Bengal Municipalities (Building), Rules, 2007 below:

“(5) Open space norm for construction of dwelling houses for poor under various Government schemes: Notwithstanding anything contained in this rule, the open space norm stipulated in this rule shall not be applicable for construction of dwelling houses for poor slum dwellers under various programmes implemented by the Government of India or the State Government. The Municipality

shall fix the open space norm under this sub-rule in consideration of the ground realities but subject to the provisions of the Act and rules made thereunder.”

In consideration of said sub-rule (5), it appears that the corporation has been empowered to take decision for maintaining open space in between adjacent premises in consideration of ground realities subject to the provisions of the Act and Rules.

Accordingly, the corporation albeit has fixed the open space which is required to be maintained while making construction under BSUP Project but considering the fact situation as involved in this writ petition as elaborately narrated in the order dated 3rd December, 2014 which led the concerned authority of the Corporation to extent further relaxation to the respondent no.6 as a special case.

In view of the special circumstances as involved in this case as discussed above and as it is also reflected from the order dated 3rd December, 2014 of the Commissioner, Chandernagore Municipal Corporation this Court is not inclined to interfere with the order passed by the Commissioner, Chandernagore Municipal Corporation dated 3rd December, 2014.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)